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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BINH T. LU, THOMAS J. OTTERLEE and CASIMER F. LASKA

Appeal 2009-0216
Application 10/725,047
Technology Center 2800

Decided: December 8, 2008

Before JAMESON LEE, RICHARD TORCZON and SALLY C. MEDLEY,
Administrative Patent Judges.

MEDLEY, *Administrative Patent Judge.*

DECISION ON APPEAL

A. Statement of the Case

Lockheed Martin Corporation (“Lockheed”), the real party in interest, seeks review under 35 U.S.C. § 134(a) of a Final Rejection¹ of claims 1, 3-7, 11-20, and 22-28², the only claims remaining in the application on appeal. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

¹ Final Rejection, mailed October 19, 2004.

² Lockheed argues that the Examiner erred in refusing to enter its claim amendment made after Final Rejection. (App. Br. 11-12, Reply Br. 4).

Lockheed's inventions are a trackable postage stamp, a dispensing system for trackable postage stamps and a method of tracking a postage stamp. The trackable postage stamp has a first surface, a second surface and a passive tracking device with stamp identification (ID) information. The dispensing system includes a plurality of postage stamps each including a passive radio frequency identification (RFID) tracking device. The dispensing system also includes a stamp dispenser and a reader operatively associated with the stamp dispenser that reads ID information from the postage stamp tracking device. The method of tracking a postage stamp includes coupling stamp tracking to a stamp, storing the tracking information in a passive RFID device, dispensing the stamp to a customer, reading the tracking information and storing the stamp ID in a database. (Spec. 1-3, 8-9).

Representative claim 1, reproduced from the Claim Appendix of the Appeal Brief, reads as follows:

A trackable postage stamp comprising:
a first surface;
a second surface opposite the first surface and adapted to
adhere to a piece of mail; and
a passive tracking device including stamp identification (ID)
information.

The Examiner relies on the following prior art in rejecting the claims on appeal:

Levasseur et al. ("Levasseur")	4,008,792	Feb. 22, 1977
Tuttle	5,497,140	Mar. 5, 1996
Porter	5,774,053	Jun. 30, 1998
Barcelou	6,048,271	Apr. 11, 2000

Such matters are decided by petition to the Director, not by the Board. See 37 C.F.R. § 1.127.

Conwell et al. (“Conwell”)	2002/0135481	Sep. 26, 2002
Fite	6,467,684	Oct. 22, 2002

The Examiner rejected claims 1 and 3-7 under 35 U.S.C. § 103(a) as unpatentable over Tuttle and Conwell.

The Examiner rejected claims 11-17, 19, 22 and 26-28 under 35 U.S.C. § 103(a) as unpatentable over Tuttle, Levasseur, Fite and Conwell.

The Examiner rejected claims 18 and 20 under 35 U.S.C. § 103(a) as unpatentable over Tuttle, Levasseur, Fite, Conwell and Barcelou.

The Examiner rejected claims 23-25 under 35 U.S.C. § 103(a) as unpatentable over Tuttle, Levasseur, Fite, Conwell and Porter.

B. Issues

Would it have been obvious to one with ordinary skill in the art at the time the invention was made to substitute a passive RFID device for Tuttle’s active RFID device in a postage stamp?

Would it have been obvious to one with ordinary skill in the art at the time the invention was made to combine Tuttle’s postage stamp with a tracking device and associated interrogator with Levasseur’s postage stamp vending machine based on Fite’s teaching of a combined vending machine and reader?

Would it have been obvious to one with ordinary skill in the art at the time the invention was made to combine an imaging device with the Tuttle, Levasseur, Fite and Conwell combined device?

Would it have been obvious to one with ordinary skill in the art at the time the invention was made to read tracking information as the stamp is deposited into a postal mailbox based on the teachings of Porter in

combination with the combined method of Tuttle, Conwell, Levasseur and Fite?

C. Findings of Fact (“FF”)

Tuttle

1. Tuttle describes a postage stamp, mailing label or shipping label with an active radio frequency identification (RFID) system 14 mounted between cover member 10 and base 12 member. (Col. 1, ll. 12-16; col. 3, ll. 44-64; Fig. 1).
2. Prior art large RFID packages that reflect RF signals have been used for monitoring the location and movement of railroad cars. (Col. 1, ll. 58-61).
3. Prior art smaller passive RFID packages have been used for tracking automobiles. (Col. 1, ll. 61-64).
4. Reflective passive RFID packages are generally inefficient in operation, require large amounts of power to operate and have limited data handling capability. (Col. 1, ll. 64-67).
5. The RFID tracking device stores data including an identification number, sender's name, point of origin, weight, size, route and destination. (Col. 3, ll. 61-64).
6. An interrogator (i.e., reader) reads information stored in the RFID tracking device to ensure that the item of shipment or luggage is most ensuredly and efficiently put in the hands of the desired recipient at the earliest possible time. (Col. 6, ll. 29-65, Fig. 6).
7. Interrogators (i.e., readers) can be located at the point of origin, points along the shipment route and a point of destination. (Col. 1, ll. 12-16, 46-50; col. 6, ll. 14-44).

Conwell

8. Conwell describes using passive RFID labels for tracking parcels. (¶¶ 0006, 0013).
9. Conwell also describes that passive RFID devices are small and inexpensive with limited range, resolution and data storage capacity. (¶ 0006).

Official Notice

10. We take official notice that parcels are often transported via the postal service and would require mailing labels and/or postage stamps.

Levasseur

11. Levasseur describes a vending machine that dispenses postage stamps. (Col. 1, ll. 11-18, 23-30; col. 2, ll. 5-11; col. 4, ll. 45-68; col. 7, ll. 58-60, 63-68; col. 9, ll. 10-27).

Fite

12. Fite describes a prepaid card 20 vending and dispensing system including a card vendor terminal 14, a host database 12 and at least one merchant station 16. (Col. 2, ll. 60-65).
13. The vendor terminal 14 has a card reader to read a unique identity number from a readable memory on a plastic card 20 and to activate the card. (Col. 3, ll. 3-15, 19-27).
14. When the plastic card is read by the card reader, the vendor or activation terminal 14 connects to a host computer provided with a database 12. (Col. 1, ll. 41-52; col. 3, ll. 25-26).
15. The card identification number is transferred from the vendor terminal 14 to the host computer and is compared to the identification numbers stored in the host computer database 12. (Col. 1, ll. 43-49).

16. If the read card identification number matches an identification number stored in the host database 12, the corresponding record in the host database 12 is switched from an inactive state to an active state. (Col. 1, ll. 46-52).
17. The vendor terminal 14 may include an unattended kiosk type automated card dispenser which permits data entry by the customer to select a card denomination value and to insert payment to activate and dispense a card 20. (Col. 3, ll. 29-33)
18. When a customer makes a purchase using a merchant station 16, the card identification number is transferred to the host database 12. (Col. 1, ll. 52-62).
19. The host database 12 compares the card identification number from the merchant station 16 with the stored card identification numbers to find a matching card number that is both in an active state and has a sufficient value to make the purchase. (Col. 1, l. 62-col. 2, l. 3).

Barcelou

20. Barcelou describes a kiosk 10 including two play stations 12, a card reader 16, an ATM machine 22 and a standard security camera 31. (Col. 5, ll. 26-43; Fig. 1)

Porter

21. Porter describes an enclosure 14 for the delivery and pick-up of goods and a communication apparatus 16 for controlling access to the enclosure 14 and for providing notification that goods are to be delivered or picked up. (Col. 3, ll. 55-60).

22. The enclosure 14 has a door lock operator 24 that can unlock the door lock 22 by a keypad entry, card reader, voice recognition, embedded microchip, etc. (Col. 4, ll. 10-22).
23. The communication apparatus 16 includes a controller 46 and a transmitting device 48. (Col. 5, ll. 26-31).
24. The controller 46 has a memory for storing vendor codes that are assigned to vendors and a plurality of vendor messages. (Col. 5, ll. 38-64; col. 7, ll. 46-50).
25. When a vendor enters a key code, a corresponding vendor message is sent from the controller 46 and transmitter 48 to a remote location such as a phone. (Col. 6, ll. 6-29).

C. Principles of Law

In *KSR*, the Supreme Court rejected the rigid application of the “teaching suggestion or motivation” (TSM) test, instead favoring the “expansive and flexible approach” used by the Court. *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1739 (2007).

Based on its precedent, the Court reaffirmed the principle that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* In *U.S. v. Adams*, 383 U.S. 39, 40 (1966), “[t]he Court recognized that when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result.” *KSR* at 1739-40.

In an obviousness analysis, it is not necessary to find precise teachings in the prior art directed to the specific subject matter claimed because

inferences and creative steps that a person of ordinary skill in the art would employ can be taken into account. *Id.* at 1741.

“A person of ordinary skill is also a person of ordinary creativity, not an automaton.” *Id.* at 1742.

A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. The degree of teaching away will of course depend on the particular facts; in general, a reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant.

In re Gurley, 27 F.3d 551, 553 (Fed. Cir. 1994) (citations omitted).

Although a reference that teaches away is a significant factor to be considered in determining unobviousness, the nature of the teaching is highly relevant, and must be weighed in substance. A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use.

Id.

“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.” *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Argument of counsel cannot take the place of evidence lacking in the record. *Meitzner v. Mindick*, 549 F.2d 775, 782 (CCPA 1977); *see also In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974).

“The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference” *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

D. Analysis

Rejection of Claims 1 and 3-7 as obvious over Tuttle and Conwell

Independent claim 1 is representative and recites “[a] trackable postage stamp comprising . . . a passive tracking device including stamp identification (ID) information.” (App. Br. 41).

Tuttle describes a postage stamp that includes an active radio frequency identification (RFID) system. (FF³ 1). Tuttle also describes that passive RFID devices are known in the prior art and have been used to track and locate railroad cars and automobiles. (FFs 2-3). Conwell explains that passive RFIDs offer the advantages of being small and inexpensive. (FF 9). It would have been obvious to one with ordinary skill in the art at the time the invention was made to substitute a passive RFID device for the active RFID device in Tuttle’s postage stamp since substituting one element for another known in the field is likely to be obvious when it does no more than yield predictable results. Lockheed has not presented evidence that substituting a passive RFID for an active RFID in a stamp provides an unpredictable result.

To the extent that the Examiner erred in concluding that it would have been obvious to *add* a passive tracking device to Tuttle’s postage stamp already having an active tracking device, such error is harmless because the applied prior art references otherwise support an obviousness rejection.

³ FF denotes Finding of Fact.

Lockheed argues that Tuttle teaches away from using passive tracking devices. (App. Br. 16). Lockheed argues that Tuttle's description of the drawbacks of passive RFIDs would lead one with ordinary skill in the art to conclude that passive tracking devices are not suitable for postage stamp and mailing label applications. (App. Br. 16, 18, 20). Lockheed further argues that that there is no reasonable expectation of success based on the combination of Tuttle and Conwell. (App. Br. 17, 20).

Lockheed's arguments are unpersuasive. Lockheed does not explain why a person of ordinary skill, upon reading Tuttle, would be discouraged from following the path set out in Tuttle or would be led in a direction divergent from the path that was taken by Lockheed. Lockheed also does not explain how Tuttle suggests that the line of development flowing from the Tuttle disclosure is unlikely to be productive of the result sought by Lockheed. Although, Tuttle describes passive RFIDs as having some undesirable properties compared to active RFIDs, one with ordinary skill in the art might reasonably conclude that active RFIDs have properties that are not needed or desirable in some applications. It has been held that a known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product. Lockheed also does not present objective evidence to support its assertion that there is no reasonable expectation of success.

Lockheed further argues that (1) Conwell describes a passive RFID transponder but does not teach or suggest applying passive RFID transponders to postage stamps or mailing labels; (2) Tuttle does not suggest a passive tracking device; and (3) the Examiner has not shown a teaching or suggestion from the references themselves without using hindsight that

would lead one of ordinary skill in the art to combine Tuttle and Conwell. (App. Br. 16, 17, 19).

Lockheed's arguments are unpersuasive because in evaluating the question of obviousness, it is not necessary to find precise teachings in the prior art directed to the specific subject matter claimed because inferences and creative steps that a person of ordinary skill in the art would employ can be taken into account. Additionally, Lockheed attacks each of the Conwell and Tuttle references individually when the rejection is based on the combination of the references. Attacking references individually is insufficient to establish non-obviousness when the rejection is based upon a combination of references.

Moreover, Conwell describes using passive RFID labels for tracking parcels while Tuttle describes using active RFID devices for tracking postage stamps, mailing labels or shipping labels on luggage or shipment items. (FFs 1, 8). Parcels are frequently transported or shipped via the postal service and would require mailing labels and/or postage stamps. (FF 10). A person of ordinary skill in the art at the time the invention was made would readily appreciate that using passive RFID labels for tracking parcels is suggestive of using passive RFIDs for shipping labels, mailing labels or postage stamps. A person of ordinary skill is a person of ordinary creativity.

Lockheed also argues that (1) applications that use one type of RFID (i.e., an active RFID) will not necessarily work if the other type of RFID (i.e., a passive RFID) is employed, and (2) one with ordinary skill would not assume that an application employing an active RFID would also work using a passive tracking device. (App. Br. 15, 16). Lockheed's arguments are unpersuasive because Lockheed has not presented objective evidence to

support its arguments. Argument of counsel cannot take the place of evidence lacking in the record.

For all these reasons, Lockheed has not sustained its burden in showing that the Examiner erred in determining that claims 1 and 3-7 are obvious over Tuttle and Conwell.

Rejection of Claims 11-17, 19, 22 and 26-28 as obvious over Tuttle,
Levasseur, Fite and Conwell

Claims 11-17

Independent claim 11 is representative and recites “[a] postage stamp dispensing system comprising: a plurality of postage stamps, each stamp including a tracking device . . . a stamp dispenser . . . a reader operatively associated with the stamp dispenser to read the stamp ID information when the relative position between the stamp and the reader changes; and a database operable to store the read stamp ID information, wherein each tracking device includes a . . . (RFID) device, and wherein the RFID device is passive.” (App. Br. 43).

As explained above in the analysis addressing claims 1 and 3-7, Tuttle and Conwell render obvious a postage stamp including a passive RFID. Neither Tuttle nor Conwell describes a dispensing system, but Levasseur teaches a postage stamp vending system. (FF 11). As explained by the Examiner, it would have been obvious to one with ordinary skill in the art at the time the invention was made to employ a vending machine to dispense stamps as taught by Levasseur in order to provide an efficient and convenient way for consumers to make a purchase when a conventional store is closed. (Final Rejection 6, Ans. 7).

Tuttle further describes an interrogator (i.e., reader) which reads information stored in the RFID tracking device memory 86 to ensure that the item of shipment is most ensured and efficiently put in the hands of the desired recipient at the earliest possible time. (FF 6). Tuttle further describes that the interrogators (i.e., readers) can be located at the point of origin, points along the shipment route and a point of destination. (FF 7). It would have been obvious to one of ordinary skill that in order to ensure that an item is put in the hands of a recipient at the earliest possible time, the interrogator must provide the information through a computing network to a central database that stores the read information so that the tracking information can otherwise be accessed should the item of shipment become lost.

However, neither Tuttle nor Levasseur describe a reader that is operatively associated with a stamp dispenser to read the stamp ID information when the relative position between the stamp and the reader changes, or a database operable to store the read stamp ID information. Fite describes a prepaid card 20 vending and dispensing system including a card vendor terminal 14, a host database 12 and at least one merchant station 16. (FF 12). The vendor terminal 14 has a card reader to read a unique identity number from a readable memory on the plastic card 20 and to activate the card. (FF 13). When the plastic card is read by the card reader, the vendor or activation terminal 14 connects to a host computer provided with a database 12 and the card identification number is transferred from the vendor terminal 14 to the host computer. (FFs 14-15). The identification number is compared to the identification numbers stored in the host computer database 12. (FF 15). If the card identification number matches

an identification number stored in the host database 12, the corresponding record in the host database 12 is switched from an inactive state to an active state. (FF 16).

As explained by the Examiner, in view of the teaching of Fite, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the combined Tuttle and Levasseur invention to employ a reader for reading ID information and storing the ID information in a database because it is favorable to track an object purchased by a consumer to ensure correct handling and operation. (Final Rejection 8, Ans. 9). Also, as explained by the Examiner, it would have been obvious to one with ordinary skill in the art at the time the invention was made to vend stamps and pre-paid cards in the same manner because the combination of Tuttle and Levasseur teach a vending system for vending stamps to be tracked and Fite describes a vending system for pre-paid cards that are tracked. (Final Rejection 8-9, Ans. 9).

Lockheed presents identical arguments for claims 11-17 as those presented for claims 1 and 3-7. (App. Br. 21-22). For the same reasons explained before with respect to claims 1 and 3-7, Lockheed fails to show that the Examiner erred in determining that claims 11-17 are obvious over Tuttle, Conwell, Levasseur and Fite.

Lockheed additionally argues that the Examiner (1) has not provided any motivation within the references themselves that would lead one of ordinary skill in the art to combine the four references; and (2) relies on impermissible hindsight and fills in the motivation to combine with the problems solved by Lockheed's invention. (App. Br. 22-25, 27-29). Lockheed more specifically argues that there is no teaching that would

suggest vending and tracking stamps in a similar manner to Fite's pre-paid cards. (App. Br. 24, 28). Lockheed argues that the stamps would therefore have to have a magnetic strip. (App. Br. 24, 28).

As explained before, it is not necessary to find precise teachings in the prior art directed to the specific subject matter claimed because inferences and creative steps that a person of ordinary skill in the art would employ can be taken into account. Lockheed has not presented evidence to dispute the Examiner's conclusion that it would have been obvious to one with ordinary skill in the art at the time the invention was made to (1) to modify the combined Tuttle and Levasseur invention to employ a reader for reading ID information and storing the ID information in a database; and (2) to vend stamps and pre-paid cards in the same manner. (Final Rejection 8-9, Ans. 9). Lockheed also has not presented evidence to show that such a modification is beyond the level of one with ordinary skill in the art.

Moreover, in light of the facts that (1) Tuttle describes an interrogator (i.e., reader) for reading stamp information which obviously transmits the read information to a central database for storage; and (2) Levasseur describes a stamp vending machine, it would have been obvious to one with ordinary skill in the art at the time the invention was made to combine Tuttle's interrogator (i.e., reader) with Levasseur's stamp vending machine since Fite teaches a combined reader and vending machine. The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. Lockheed has not presented evidence that the combination yields an unpredictable result.

Additionally, Lockheed's argument that the stamps would necessarily have a magnetic strip presumes that Fite's card magnetic strip must be

bodily incorporated into Tuttle's postage stamp. However, obviousness does not require the features of a secondary reference to be bodily incorporated into the structure of the primary reference.

Lockheed argues that Fite does not describe (1) reading a passive RFID that is positioned on a stamp or other product; and (2) storing read information in a database. (App. Br. 22, 24). Lockheed also argues that Levasseur does not describe (1) passive RFIDs or active RFIDs; (2) reading a passive RFID that is positioned on a stamp; (3) storing the read data in a database; and (4) vending stamps. (App. Br. 22-23, 27).

Lockheed's arguments attack each of the Fite and Levasseur references individually, when the rejection is based on the combination of the Tuttle, Conwell, Levasseur and Fite. Attacking references individually is insufficient to establish non-obviousness when the rejection is based upon a combination of references. In addition, Lockheed misapprehends the Lavasseur reference because Levasseur describes a vending machine that dispenses postage stamps. (FF 11).

Lockheed also argues that Fite does not suggest (1) tracking the cards after purchase (App. Br. 24, 28). Lockheed's argument is not commensurate in scope with the claim language because the claim language does not require tracking the stamps after purchase. Moreover, Fite describes that the cards are tracked after purchase because when a user enters the ID information at the merchant station, the host database has to check to see if the card is valid and that the card value is at least equal to the purchase price. (FFs 18-19).

For all these reasons, we find that the Lockheed has not met its burden in showing that the Examiner erred in determining that claims 11-17 are obvious over Tuttle, Levasseur, Fite and Conwell.

Claims 19 and 26-28

Independent claim 19 is representative and recites “[a] method of tracking a postage stamp, the method comprising . . . reading the tracking information as the stamp is dispensed . . .” (App. Br. 45). The Examiner rejected claims 19 and 26-28 as obvious over Tuttle, Conwell, Fite and Levasseur utilizing the same rationale as was used for claims 11-17. (Final Rejection 5-10 and Ans. 6-11).

Lockheed makes identical arguments for claims 19 and 26-28 as those made for claims 1, 3-7 and 11-17. (App. Br. 26-29). For the same reasons explained above with respect to claims 1, 3-7 and 11-17, Lockheed fails to show that the Examiner erred in determining that claims 19 and 26-28 are obvious over Tuttle, Conwell, Levasseur and Fite.

Lockheed additionally argues that neither Fite nor Levasseur describe reading a passive RFID that is positioned on a stamp or other product as the product is dispensed. (App. Br. 26-29).

The Examiner did not rely on Levasseur for describing that information is read as the product is dispensed, but instead relied on Fite. (Final Rejection 7-9, Ans. 7-9). Lockheed’s arguments attack the Levasseur and Fite references individually. The rejection was based on the combination of the Tuttle, Conwell, Levasseur and Fite references. Attacking references individually is insufficient to establish non-obviousness when the rejection is based upon a combination of references.

Lockheed appears to understand the limitation “as the stamp is dispensed” to mean that the information is read at the same time as when the vending machine is passing the stamps from the machine. However, the broadest reasonable interpretation of the aforementioned limitation includes the entire dispensing process that begins when a customer inserts money into the vending machine and makes their purchase selection and ends when the desired product is passed from the machine.

Lockheed also argues that Fite describes reading a magnetic strip on a card *after* the card is dispensed to a customer. (App. Br. 26, 28). Fite describes a card reader that reads a unique identity number from a readable memory on a plastic card 20 and activates the card. (FF 13). Fite describes vendor terminals 14 as unattended kiosk type automated card dispensers which permit data entry by the customer to select a card denomination value and payment insertion to activate and dispense a card 20. (FF 17). Thus, Fite describes that the card is activated by the card reader prior to being dispensed from the automated card dispenser. Lockheed has not directed us to, and we can not find, where Fite describes reading a magnetic strip on a card after the card is dispensed to a customer.

For all these reasons, we find that the Lockheed has not met its burden in showing that the Examiner erred in determining that claims 19 and 26-28 are obvious over Tuttle, Levasseur, Fite and Conwell.

Claim 22

Claim 22 is dependent on claim 19 and recites “storing a dispensing location within the database.” (App. Br. 45).

Lockheed argues that Tuttle, Fite, Levasseur and Conwell do not alone or in combination teach or suggest each and every limitation of claim 22.

(App. Br. 30). Lockheed argues that Fite does not describe storing a dispensing location within the database, or does not suggest storing data related to where the card was sold or dispensed. (App. Br. 30).

Lockheed's arguments attack the Fite reference individually. The rejection was based on the combination of the Tuttle, Conwell, Levasseur and Fite references. Attacking references individually is insufficient to establish non-obviousness when the rejection is based upon a combination of references.

In addressing the claim, the Examiner directs attention to Tuttle which describes the data stored in the stamp RFID memory includes an identification number, the sender's name, point of origin, weight, size, route and destination. (Final Rejection 10, Ans. 11, FF 5). Thus, the citation to Tuttle describes that the dispensing location (i.e., point of origin) is stored in the postage stamp RFID memory. (FF 5). Tuttle also describes an interrogator (i.e., reader) that reads information stored in the stamp RFID memory to ensure that the item of shipment is most ensuredly and efficiently put in the hands of the desired recipient at the earliest possible time. (FF 6).

It would have been obvious to one of ordinary skill that in order to ensure that the items are put in the hands of a recipient at the earliest possible time, the interrogator must provide the information through a computing network to a central database that stores the read information so that the tracking information can otherwise be accessed should the item of shipment become lost. Thus, contrary to Lockheed's arguments, it would have been obvious to one with ordinary skill that the dispensing location (i.e., point of origin) along with the other information read from the stamp would be transmitted

to and stored within a central database so that the tracking information can otherwise be accessed should the item of shipment become lost.

For all these reasons, we find that Lockheed has not shown that the Examiner erred in determining that claim 22 is obvious over Tuttle, Levasseur, Fite and Conwell.

Rejection of Claims 18 and 20 as obvious over Tuttle Levasseur, Fite, Conwell and Barcelou

Claims 18 and 20 are dependent on claims 11 and 19 respectively. Representative claim 18 recites “an imaging device operatively associated with the stamp dispenser” (App. Br. 44).

Barcelou describes a kiosk 10 including two play stations 12, a card reader 16, an ATM machine 22 and a standard security camera 31. (FF 20). As explained by the Examiner, it would have been obvious to one with ordinary skill in the art at the time the invention was made to employ an imaging system in order to have a record of who is purchasing and utilizing the vended product and to add security to the system. (Final Rejection 12-13, Ans. 12-14).

Lockheed argues that Barcelou does not teach or suggest each and every limitation of claim 11 or claim 18. (App. Br. 32). Lockheed also argues that the Examiner uses hindsight to combine the references and that there is no suggestion in Barcelou, Tuttle, Levasseur, Fite and Conwell that would lead one of ordinary skill in the art to combine the teachings of the five references. (App. Br. 32).

Lockheed’s arguments are unpersuasive. Lockheed’s arguments attack the Barcelou reference individually instead of the combined teachings of the references. This is insufficient to establish non-obviousness. Lockheed’s

argument that there is no suggestion in the references themselves to combine the teachings of the references is also unpersuasive. In evaluating the question of obviousness, it is not necessary to find precise teachings in the prior art directed to the specific subject matter claimed because inferences and creative steps that a person of ordinary skill in the art would employ can be taken into account. It would have been obvious to one with ordinary skill in the art at the time the invention was made to combine the Tuttle, Conwell, Levasseur and Fite invention with the security camera of Barcelou since the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. Lockheed has not presented evidence that the combination yields an unpredictable result.

For all these reasons, we find that the Lockheed has not met its burden in showing that the Examiner erred in determining that claims 18 and 20 are obvious over Tuttle, Levasseur, Fite, Conwell and Barcelou.

Rejection of Claims 23-25 as obvious over Tuttle, Levasseur, Fite, Conwell and Porter

Claims 23-25 indirectly or directly depend on claim 19. Representative claim 23 recites “reading the tracking information as the stamp is deposited into a postal mailbox, and storing the stamp ID and a mailbox location within a database.” (App. Br. 45).

Lockheed argues that Porter does not teach or suggest reading any information associated with or attached to an object that is placed in a storage space. (Appeal Br. 34). Lockheed argues that instead Porter describes a storage device that uses and stores user information provided by the user to provide tracking and access control for a storage space. (Appeal Br. 34).

Lockheed's arguments are persuasive. The Examiner has not addressed the limitations of claims 23-25. Instead, the Examiner finds that Porter describes confirming the delivery of articles to the correct mailbox. (Final Rejection 13, Ans. 14). The Examiner has not directed us to and we can not find where Porter describes or suggests reading information from the object as it is deposited in a storage space. Instead, Porter describes an enclosure 14 for the delivery and pick-up of goods that utilizes vendor key codes or similar means for controlling access to the enclosure (FF 21-25).

For all these reasons, we find that the Examiner erred in determining that claims 23-26 are obvious over Tuttle, Levasseur, Fite, Conwell and Porter.

E. Conclusions of Law

Based on the Findings of Fact and the Analysis above, it would have been obvious to one with ordinary skill in the art at the time the invention was made to (1) substitute a passive RFID device for Tuttle's active RFID device contained in a postage stamp; (2) combine Tuttle's trackable postage stamp and associated interrogator with Levasseur's postage stamp vending machine; and (3) combine an imaging device with the Tuttle, Conwell, Levasseur and Fite combined device. It would not have been obvious to one with ordinary skill in the art at the time the invention was made to read tracking information as the stamp is deposited into a postal mailbox.

F. Decision

The decision of the Examiner rejecting claims 1 and 3-7 under 35 U.S.C. § 103(a) as unpatentable over Tuttle and Conwell is affirmed.

The decision of the Examiner rejecting claims 11-17, 19, 22 and 26-28 under 35 U.S.C. § 103(a) as unpatentable over Tuttle, Levasseur, Fite and Conwell is affirmed.

The decision of the Examiner rejecting claims 18 and 20 under 35 U.S.C. § 103(a) as unpatentable over Tuttle, Levasseur, Fite, Conwell and Barcelou is affirmed.

The decision of the Examiner rejecting 23-25 under 35 U.S.C. § 103(a) as unpatentable over Tuttle, Levasseur, Fite, Conwell and Porter is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART

rvb

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